

Access to MMIS Health Care Data for Women, Infant, Children (WIC) Workers

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Context

This analysis is a response to the ongoing discussion of whether DHS may share health care information with WIC employees.

After more research and contemplating about this issue, I have come up with a new analysis that supports this disclosure. I am first providing a brief background of this issue to ensure that everyone is on the same page. I will then detail how this disclosure is authorized under Medicaid regulations, federal and state law, and DHS' Minnesota Health Care Program ("MHCP") application. Following this analysis is the legal appendix of citations used in my analysis.

Background

Allowing county workers to use DHS' Shared Master Index ("SMI") would enable them access certain private data across the major DHS data systems. Women Infants and Children ("WIC") is a program not administered by DHS, but instead, by the Minnesota Department of Health ("MDH"). Minn. Stats. § 145.894 (2009). WIC is a federal program that provides through grant-in-aid to states the delivery of nutritional supplements to pregnant and lactating women, infants, and children. 42 U.S.C.A. § 1786 (c) – (d) (2009).

Pregnant or lactating women, infants and children receiving any form of public assistance under DHS administered Minnesota Health Care Programs may likely be eligible for WIC. Minn. Stats. § 145.893, subd. 2 (2009). Allowing WIC employees to access the SMI for the purpose of determining WIC eligibility would allow for the integrated collaboration that the SMI was designed to provide. Yet, the fact that an individual participates in an MHCP is Protected Health Information ("PHI"). Generally, disclosures of PHI cannot be made to those other than the individual unless an exception applies. 45 C.F.R. § 164.502(a); Minn. Stats. § 13.46, subd. 2.

Analysis

A. Medicaid regulations authorize this disclosure

Under Medicaid regulations, a disclosure of Medicaid data must benefit the Medicaid program. 42 C.F.R. §§ 431.301, 431.302 (2009). These regulations require the State Plan to detail the safeguards that a state uses to restrict the use of applicant and recipient data. 42 C.F.R. § 431.300(a) (2009). This use is restricted to purposes directly connected with the administration of the Medical Assistance plan. 42 C.F.R. § 431.301(2009). Establishing *eligibility and providing services* for recipients are purposes directly related to the administration of the State Plan. 42 C.F.R. § 431.302(a), (c) (2009).

Because this disclosure *establishes* whether a recipient is on Medicaid for the purposes of qualifying for WIC, and it could ultimately *provide* a recipient with *services*, the disclosure is directly connected with the administration of the State Plan. Thus, Medicaid regulations authorize this disclosure.

Additionally, the authors Medicaid regulations realize a symbiosis between Medicaid and WIC. This is clearly illustrated in 42 C.F.R. § 431.635(c)(1), which states that a State Plan must provide for “coordinating operation of the Medicaid program with the State’s operation of [WIC].” It is further illustrated in 42 C.F.R. § 431.635(c)(2), which mandates coordination of Medicaid with WIC, which provides express instructions for the notification of recipients, but not disclosure among government agencies. This is not dispositive; however, DHS may have implied authorization to make this disclosure. The provision that provides for coordination expressly provides for the coordination of *operations*, and it is independent of the provision pertaining to notice to individuals. See, 42 C.F.R. § 431.635(c). Operations are a matter of functioning; DHS is responsible for Medicaid operations and MDH and county WIC employees are responsible for WIC operations. Thus, in order to coordinate these operations, it is implied that these agencies will share data. Thus, DHS most likely has the implied authority to disclose this information to WIC employees.

B. Federal and state law authorize this disclosure

Federal law authorizes a disclosure in this situation if it is expressly authorized by state law. 45 C.F.R. § 164.512(k)(6)(i). Minnesota state law expressly authorizes disclosures of welfare program data for the purpose of administering federal funds or programs. Minn. Stats. § 13.46, subd. 2(a)(6) (2009) (data on individuals collected, maintained, used, by the welfare system shall not be disclosed except ... to administer federal funds or programs). Because WIC is a federal program and a person’s eligibility for DHS services is welfare data, Minnesota law expressly authorizes the disclosure; and thus, the disclosure is also authorized under federal law. See, 42 U.S.C.A. § 1786 (2009) (WIC is a federal program).

One caveat to this analysis is that Minnesota law defines the “welfare system” as “DHS, local social services agencies, county welfare agencies, ... and other entities under contract to any of those agencies to the extent specified in the contract.” Minn. Stats. § 13.46, subd. 1(c) (2009). Arguably, county WIC employees may qualify as part of the welfare system as a local social service agencies, or possibly as a county welfare agency.

A second caveat is whether the applicant has authorized such a release. The signature page of the MHCP application provides authorization of disclosure to county case workers to “provide and coordinate health care services.” I would think that WIC workers are case workers and based on the definition of health care below, the disclosure is necessary to provide health care services.

C. Minnesota Health Care Program application authorizes this disclosure

Under HIPAA, health care is defined as care, services, or supplies related to the health of an individual. 42 U.S.C.A. § 160.103 (2009). Under this law, healthcare includes preventative care that “affects the structure or **function** of the body.” *Id.* Arguably, WIC qualifies as healthcare because one eligibility criteria of WIC is that the individual is certified to be a *nutritional risk* and

is without sufficient resources to purchase necessary nutritional supplements. Minn. Stats. § 145.893, subd. 2 (c)-(d) (2009). Proper nutrition affects the function of the body and *prevents* various sickness and diseases.

Conclusion

Based on this analysis under federal law, state law, and Medicaid regulations, my position is DHS may share the limited information concerning health care eligibility with WIC employees.

Appendix

1. Minn. Stats. § 145.894 (2009)

The commissioner of health shall:

- (a) develop a comprehensive state plan for the delivery of nutritional supplements to pregnant and lactating women, infants, and children;
- (b) contract with existing local public or private nonprofit organizations for the administration of the nutritional supplement program;
- (c) develop and implement a public education program promoting the provisions of sections 145.891 to 145.897, and provide for the delivery of individual and family nutrition education and counseling at project sites. The education programs must include a campaign to promote breast feeding;
- (d) develop in cooperation with other agencies and vendors a uniform state voucher system for the delivery of nutritional supplements;
- (e) authorize local health agencies to issue vouchers bimonthly to some or all eligible individuals served by the agency, provided the agency demonstrates that the federal minimum requirements for providing nutrition education will continue to be met and that the quality of nutrition education and health services provided by the agency will not be adversely impacted;
- (f) investigate and implement a system to reduce the cost of nutritional supplements and maintain ongoing negotiations with nonparticipating manufacturers and suppliers to maximize cost savings;
- (g) develop, analyze, and evaluate the health aspects of the nutritional supplement program and establish nutritional guidelines for the program;
- (h) apply for, administer, and annually expend at least 99 percent of available federal or private funds;
- (i) aggressively market services to eligible individuals by conducting ongoing outreach activities and by coordinating with and providing marketing materials and technical assistance to local human services and community service agencies and nonprofit service providers;
- (j) determine, on July 1 of each year, the number of pregnant women participating in each special supplemental food program for women, infants, and children (WIC) and, in 1986, 1987, and 1988, at the commissioner's discretion, designate a different food program deliverer if the current deliverer fails to increase the participation of pregnant women in the program by at

least ten percent over the previous year's participation rate;

(k) promulgate all rules necessary to carry out the provisions of sections 145.891 to 145.897; and

(l) ensure that any state appropriation to supplement the federal program is spent consistent with federal requirements.

2. 42 U.S.C.A. § 1786 (c) – (d) (2009)

(c) Grants-in-aid; cash grants; ratable reduction of amount an agency may distribute; affirmative action; regulations relating to dual receipt of benefits under commodity supplemental food program

(1) The Secretary may carry out a special supplemental nutrition program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children who satisfy the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to—

(A) the supplemental nutrition assistance program;

(B) any program under which foods are distributed to needy families in lieu of supplemental nutrition assistance program benefits; and

(C) receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.

(2) Subject to amounts appropriated to carry out this section under subsection (g) of this section—

(A) the Secretary shall make cash grants to State agencies for the purpose of administering the program, and

(B) any State agency approved eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds to carry out the program.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental foods. The existence of a commodity supplemental food program under section 4 of the Agriculture and Consumer Protection Act of 1973 shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity supplemental food program, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.

(d) Eligible participants

(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, infants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2)

(A) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of individuals for participation in the program. Any individual at nutritional risk shall be eligible for the program under this section only if such individual—

(i) is a member of a family with an income that is less than the maximum income limit prescribed under section 1758 (b) of this title for free and reduced price meals;

(ii)

(I) receives supplemental nutrition assistance program benefits under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.]; or

(II) is a member of a family that receives assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995; or

(iii)

(I) receives medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or

(II) is a member of a family in which a pregnant woman or an infant receives such assistance.

(B) For the purpose of determining income eligibility under this section, any State agency may choose to exclude from income—

(i) any basic allowance—

(I) for housing received by military service personnel residing off military installations; or

(II) provided under section 403 of title 37 for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10 or any related provision of law; and

(ii) any cost-of-living allowance provided under section 405 of title 37 to a member of a uniformed service who is on duty outside the contiguous States of the United States.

(C) In the case of a pregnant woman who is otherwise ineligible for participation in the program because the family of the woman is of insufficient size to meet the income eligibility standards

of the program, the pregnant woman shall be considered to have satisfied the income eligibility standards if, by increasing the number of individuals in the family of the woman by 1 individual, the income eligibility standards would be met.

(3) Certification.—

(A) Procedures.—

(i) In general.— Subject to clause (ii), a person shall be certified for participation in accordance with general procedures prescribed by the Secretary.

(ii) Breastfeeding women.— A State may elect to certify a breastfeeding woman for a period of 1 year postpartum or until a woman discontinues breastfeeding, whichever is earlier.

(B) A State may consider pregnant women who meet the income eligibility standards to be presumptively eligible to participate in the program and may certify the women for participation immediately, without delaying certification until an evaluation is made concerning nutritional risk. A nutritional risk evaluation of such a woman shall be completed not later than 60 days after the woman is certified for participation. If it is subsequently determined that the woman does not meet nutritional risk criteria, the certification of the woman shall terminate on the date of the determination.

(C) Physical presence.—

(i) In general.— Except as provided in clause (ii) and subject to the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 794 of title 29, each individual seeking certification or recertification for participation in the program shall be physically present at each certification or recertification determination in order to determine eligibility under the program.

(ii) Waivers.— If the agency determines that the requirement of clause (i) would present an unreasonable barrier to participation, a local agency may waive the requirement of clause (i) with respect to—

(I) an infant or child who—

(aa) was present at the initial certification visit; and

(bb) is receiving ongoing health care;

(II) an infant or child who—

(aa) was present at the initial certification visit;

(bb) was present at a certification or recertification determination within the 1-year period ending on the date of the certification or recertification determination described in clause (i); and

(cc) has one or more parents who work; and

(III) an infant under 8 weeks of age—

(aa) who cannot be present at certification for a reason determined appropriate by the local agency; and

(bb) for whom all necessary certification information is provided.

(D) Income documentation.—

(i) In general.— Except as provided in clause (ii), in order to participate in the program pursuant to clause (i) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of family income.

(ii) Waivers.— A State agency may waive the documentation requirement of clause (i), in accordance with criteria established by the Secretary, with respect to—

(I) an individual for whom the necessary documentation is not available; or

(II) an individual, such as a homeless woman or child, for whom the agency determines the requirement of clause (i) would present an unreasonable barrier to participation.

(E) Adjunct documentation.— In order to participate in the program pursuant to clause (ii) or (iii) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of receipt of assistance described in that clause.

(F) Proof of residency.— An individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may, under standards established by the Secretary, establish proof of residency under this section by providing to the State agency the mailing address of the individual and the name of the remote Indian or Native village.

3. Minn. Stats. § 145.893, subd. 2 (2009)

Subd. 2. Eligibility.

An individual shall be eligible for nutritional supplements who is not receiving a similar supplement under any federal, state, or local program and

(a) Is pregnant or lactating; or

(b) Is an infant or a child; and

(c) Is eligible for or a recipient of any form of public assistance authorized by law and is certified by the local health agency to be a nutritional risk; or

(d) Is certified by the local health agency to be a nutritional risk and is without sufficient resources to purchase necessary nutritional supplements.

4. 45 C.F.R. § 164.502(a) (2009)

(a) Standard. A covered entity may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.

(1) Permitted uses and disclosures. A covered entity is permitted to use or disclose protected

health information as follows:

- (i) To the individual;
 - (ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;
 - (iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of § 164.502(b), § 164.514(d), and § 164.530(c) with respect to such otherwise permitted or required use or disclosure;
 - (iv) Pursuant to and in compliance with a valid authorization under § 164.508;
 - (v) Pursuant to an agreement under, or as otherwise permitted by, § 164.510; and
 - (vi) As permitted by and in compliance with this section, § 164.512, or § 164.514(e), (f), or (g).
- (2) Required disclosures. A covered entity is required to disclose protected health information:
- (i) To an individual, when requested under, and required by § 164.524 or § 164.528; and
 - (ii) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the covered entity's compliance with this subpart.

5. Minn. Stats. § 13.46, subd. 2. (2009)

See No. 11.

6. 42 C.F.R. § 431.300(a)(2009)

(a) Section 1902(a)(7) of the Act requires that a State plan must provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. This subpart specifies State plan requirements, the types of information to be safeguarded, the conditions for release of safeguarded information, and restrictions on the distribution of other information.

(b) Section 1137 of the Act, which requires agencies to exchange information in order to verify the income and eligibility of applicants and recipients (see § 435.940ff), requires State agencies to have adequate safeguards to assure that—

- (1) Information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information, and information received under section 6103(l) of the Internal Revenue Code of 1954 is exchanged only with agencies authorized to receive that information under that section of the Code; and
- (2) The information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

7. 42 C.F.R. § 431.301 (2009)

A State plan must provide, under a State statute that imposes legal sanctions, safeguards meeting the requirements of this subpart that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan.

8. 42 C.F.R. § 431.302(a), (c) (2009)

Purposes directly related to plan administration include—

- (a) Establishing eligibility;
- (b) Determining the amount of medical assistance;
- (c) Providing services for recipients; and
- (d) Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan.

9. 42 C.F.R. § 431.635 (2009)

(a) Basis. This section implements sections 1902(a)(11)(C) and 1902(a)(53) of the Act, which provide for coordination of Medicaid with the Special Supplemental Food Program for Women, Infants, and Children (WIC) under section 17 of the Child Nutrition Act of 1966.

(b) Definitions. As used in this section, the terms breastfeeding women, postpartum women, and pregnant women mean women as defined in section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(c) State plan requirements. A State Plan must provide for—

(1) Coordinating operation of the Medicaid program with the State's operation of the Special Supplemental Food Program for Women, Infants, and Children;

(2) Providing timely written notice of the availability of WIC benefits to all individuals in the State who are determined to be eligible (including presumptively eligible) for Medicaid and who are:

- (i) Pregnant women;
- (ii) Postpartum women;
- (iii) Breastfeeding women; and
- (iv) Children under the age of 5.

(3) Referring individuals described under paragraphs (c)(2) (i) through (iv) of this section to the local agency responsible for administering the WIC program.

(d) Notification requirements.

(1) The agency must give the written notice required under paragraph (c) of this section as soon as the agency identifies the individual (e.g., at the time of an eligibility determination for Medicaid) or immediately thereafter (e.g., at the time of notice of eligibility).

(2) The agency, no less frequently than annually, must also provide written notice of the availability of WIC benefits, including the location and telephone number of the local WIC agency or instructions for obtaining further information about the WIC program, to all Medicaid recipients (including those found to be presumptively eligible) who are under age 5 or who are women who might be pregnant, postpartum, or breastfeeding as described in paragraphs (c)(2) (i) through (iv) of this section.

(3) The agency must effectively inform those individuals who are blind or deaf or who cannot read or understand the English language.

10. 45 C.F.R. § 164.512

(k) Standard: Uses and disclosures for specialized government functions.

(6) Covered entities that are government programs providing public benefits.

(i) A health plan that is a government program providing public benefits may disclose protected health information relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.

(ii) A covered entity that is a government agency administering a government program providing public benefits may disclose protected health information relating to the program to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

11. Minn. Stats. § 13.46, subd. 2(a) (2009)

Subdivision 1. Definitions. As used in this section:

(c) "Welfare system" includes the Department of Human Services, local social services agencies, county welfare agencies, private licensing agencies, the public authority responsible for child support enforcement, human services boards, community mental health center boards, state hospitals, state nursing homes, the ombudsman for mental health and developmental disabilities, and persons, agencies, institutions, organizations, and other entities under contract to any of the above agencies to the extent specified in the contract.

Subd. 2. General.

(a) Unless the data is summary data or a statute specifically provides a different classification, data on individuals collected, maintained, used, or disseminated by the welfare system is private data on individuals, and shall not be disclosed except:

(1) according to section 13.05;

(2) according to court order;

(3) according to a statute specifically authorizing access to the private data;

(4) to an agent of the welfare system, including a law enforcement person, attorney, or investigator acting for it in the investigation or prosecution of a criminal or civil proceeding relating to the administration of a program;

(5) to personnel of the welfare system who require the data to verify an individual's identity;

determine eligibility, amount of assistance, and the need to provide services to an individual or family across programs; evaluate the effectiveness of programs; assess parental contribution amounts; and investigate suspected fraud;

(6) to administer federal funds or programs;

(7) between personnel of the welfare system working in the same program;

...

12. Minn. Stats. § 145.893 (2009)

Subd. 2. Eligibility.

An individual shall be eligible for nutritional supplements who is not receiving a similar supplement under any federal, state, or local program and

(a) Is pregnant or lactating; or

(b) Is an infant or a child; and

(c) Is eligible for or a recipient of any form of public assistance authorized by law and is certified by the local health agency to be a nutritional risk; or

(d) Is certified by the local health agency to be a nutritional risk and is without sufficient resources to purchase necessary nutritional supplements.

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